

# Submission to the House of Commons PACAC inquiry: Devolution capability in Whitehall

**September 2023**

The Senedd's Legislation, Justice and Constitution Committee has a broad remit which includes the consideration of constitutional matters, intergovernmental relations and legislative consent memoranda laid by the Welsh Government about UK Bills making provision for any purpose within the legislative competence of the Senedd.

## **Background**

### **Our submission**

1. Our submission will focus on two of the themes in your call for evidence:
  - To what extent has the Dunlop Review of Union Capability been implemented and what remains to be addressed?
  - How do the devolved institutions view devolution capability in Whitehall and what approach do they take to building the equivalent knowledge and capability on the part of Ministers and Officials in their own administrations?

### **Fifth Assembly report**

2. The Constitutional and Legislative Affairs Committee in the Fifth Assembly carried out an inquiry into UK governance post-Brexit, publishing a report with 9 recommendations in February 2018.<sup>1</sup> The inquiry looked into how the Welsh and UK governments should work together,

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<sup>1</sup> Constitutional and Legislative Affairs Committee, [UK governance post-Brexit](#), February 2018 and Constitutional and Legislative Affairs Committee, [UK governance post-Brexit: summary of evidence](#), May 2018

including extensive work on the understanding of devolution in Whitehall. It found that knowledge and understanding of devolution in Whitehall was poor.

## **Dunlop Review and intergovernmental relations**

### **General observations**

**3.** Relationships between governments have been important since the inception of devolution but have taken on a greater prominence since the UK left the EU. Our predecessor Committee's 2018 report highlighted the need for significant improvement in this area. It recommended that the Welsh Government enter into an agreement with that Committee to support the scrutiny of intergovernmental activity. The first Inter-Institutional Relations Agreement was agreed in January 2019. A new, updated Agreement for the Sixth Senedd was agreed by the Committee in November 2021<sup>2</sup> and debated in plenary on 15 December 2021.<sup>3</sup> In line with the Agreement, on 18 July 2023 the Welsh Government published its report on intergovernmental relations between 2021 and 2023.<sup>4</sup>

**4.** The publication of the Dunlop Review marked a positive step in the right direction towards improving intergovernmental relations. However, our assessment is that this has not yet led to the kind of step change that we would like to have seen, not least from our perspective as a parliamentary Committee seeking to scrutinise how governments work together, particularly on legislative matters.

**5.** While there may have been improvements in individual Whitehall departments, collectively we do not believe that there has been enough progress overall to improve the knowledge and understanding of devolution across Whitehall, and both aspects remain inconsistent.

**6.** Although we have heard Ministers in the Welsh Government make positive comments about engagement with UK Ministers, we have also heard frustrations from the Welsh Government on numerous occasions about the difficulties they have encountered. For example, regarding late notice of interministerial meetings,<sup>5</sup> non-attendance of the relevant Secretary of

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<sup>2</sup> Legislation, Justice and Constitution Committee, [Inter-Institutional Relations Agreement between Senedd Cymru and the Welsh Government](#), November 2021

<sup>3</sup> [Plenary](#), 15 December 2021, RoP [249-278]

<sup>4</sup> Welsh Government, [Inter-Institutional relations agreement between the Senedd and the Welsh Government: report on intergovernmental relations covering the period 2021 to 2023. Overview report covering the period April 2021 to March 2023](#), 18 July 2023

<sup>5</sup> Welsh Government, [Written Statement: Meeting of the UK-EU Relations Interministerial Group](#), 17 February 2022

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State at interministerial meetings<sup>6</sup> and in connection with UK Bills that propose provisions in devolved areas (see later consideration in this submission).

**7.** Quarterly reports on intergovernmental relations from the UK Government are Whitehall centric, and sometimes confuse formal and informal intergovernmental meetings. The independent standing secretariat announced in the outcome of the 2022 Intergovernmental Relations (IGR) Review has not yet been established, despite commitments from the Secretary of State that it would be in place before the summer recess.<sup>7</sup> An independent intergovernmental secretariat was a recommendation of the Dunlop Review, and the new disputes resolution process relies upon its creation.

**8.** More than half of the Interministerial Groups (IMGs) listed in the IGR Review have now been established. The regularity of meetings and the detail of the communiqués varies between IMGs. Some groups, such as the IMG on Environment, Food and Rural Affairs and the IMG for Business and Industry, meet regularly, although the communiqués from the former are much more detailed than the latter. Others, such as the IMG on Safety, Security and Migration and the IMG for Tourism, have only met once. Some policy areas, such as Culture, do not appear to have an IMG in place.

### **Intergovernmental relationships on UK Bills making provision in devolved areas**

**9.** Our 2021/22 annual report<sup>8</sup> highlighted the significant increase in the use of UK Bills to propose law in devolved areas, our concerns with this approach and our view that a democratic deficit has been emerging. The 2022/23 period has seen this unfortunate trend continue. Our Committee, and the Senedd more widely, spends a significant amount of time scrutinising legislative consent memoranda for UK Bills without any real ability to influence the primary legislation being made in devolved areas. As a consequence we consider that on too many occasions the Senedd's functions are being bypassed.

**10.** We recognise that the Senedd has a decision to make on whether to grant or to withhold legislative consent. However, a binary decision - yes or no - to the inclusion of devolved provisions in a UK Bill is not a substitute for line-by-line scrutiny, the ability to table amendments, hear evidence and seek improvements to Bills introduced to the Senedd.

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<sup>6</sup> [Letter from the Minister for Rural Affairs and North Wales, and Trefnydd and Minister for Climate Change](#), 27 April 2023

<sup>7</sup> House of Commons Levelling Up, Housing and Communities Committee, [Oral evidence: Intergovernmental Relations](#), 27 March 2023

<sup>8</sup> LJC Committee, [Annual Report 2021/22](#), October 2022, paragraphs 20-32 and 48-59

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**11.** There have also been several examples where the Welsh Government has said that they received late sight of a UK Bill (making provision in devolved areas) before its publication, for example in relation to the Northern Ireland Protocol Bill,<sup>9</sup> the Levelling-up and Regeneration Bill<sup>10</sup> and the Retained EU Law (Revocation and Reform) Bill.<sup>11</sup>

**12.** There have also been occasions where the Welsh and UK governments have not been able to reach agreement on certain provisions, resulting in more than one consent motion being tabled. For example, in relation to the Police, Crime, Sentencing and Courts Bill, agreement between governments was not reached on some provisions; this resulted in the Welsh Government tabling two motions seeking consent in relation to specific provisions listed in each motion. This occurred for debates on 18 January 2022 and 1 March 2022, and on each occasion, the Senedd only agreed to one of the motions.<sup>12</sup> The Bill was subsequently passed by the UK Parliament, including those provisions for which the Senedd refused consent.

**13.** In March 2023, the Welsh Government told us that “only in the most exceptional circumstances that you would expect there to be disputes ... much of the framework is about the avoidance of disputes and coming to actual agreements” but that the dispute resolution process was a “significant step forward”.<sup>13</sup> When reporting subsequently on legislative consent memoranda, we have recommended on occasion that the Welsh Government clarify the steps it has taken to resolve differences of opinion where they exist with the UK Government using the new intergovernmental dispute resolution processes. However, according to its responses, the Welsh Government appears reluctant to engage with or use the process.<sup>14</sup>

**14.** In evidence to us on 10 July 2023 the Counsel General and Minister for the Constitution, Mick Antoniw MS, suggested that the IGR dispute resolution process was not suitable for solving issues related to individual UK Bills because of the timescales involved in their scrutiny and passage through the UK Parliament.<sup>15</sup> We sought further clarification on this point<sup>16</sup> and in response he told us:

*“The focus of the IGR Review is initially on dispute avoidance. We act in that spirit. Where we have concerns about a particular piece of UK legislation, we seek to work*

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<sup>9</sup> [Letter from the Minister for Economy](#), 27 June 2022

<sup>10</sup> Welsh Government, [Revised Legislative Consent Memorandum Levelling-up and Regeneration Bill](#), 25 November 2022, paragraph 3

<sup>11</sup> [Letter from the Counsel General and the Minister for the Constitution to the Llywydd](#), 5 October 2022

<sup>12</sup> [Legislative Consent: Police, Crime, Sentencing and Courts Bill](#)

<sup>13</sup> LJC Committee, [14 March 2023](#), RoP [17-18, 96]

<sup>14</sup> For example see correspondence from the Welsh Government on the UK Infrastructure Bank Bill ([21 November 2022](#)) and Strikes (Minimum Service Levels) Bill ([24 April 2023](#))

<sup>15</sup> LJC Committee, [10 July 2023](#), RoP [161-165]

<sup>16</sup> [Letter to the Counsel General and Minister for the Constitution](#), 24 July 2023, Question 2

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*with UK Government in the first instance to ensure our positions are understood, with a view to them taking appropriate action to remedy the issue.*

*It is not the case that the dispute processes in the IGR Review cannot be used in relation to individual UK Bills; however, the associated timetabling would be likely be complex. It can sometimes be very late in a Bill's passage before it becomes clear that agreement at intergovernmental level cannot be reached, and whilst the dispute processes can run quickly, they do not override Parliament's ability to pursue and timetable legislative business."<sup>17</sup>*

**15.** We would also draw your attention to our recent consideration of a legislative consent memorandum related to the Energy Bill. On 10 July 2023, we took evidence from the Minister for Climate Change, Julie James MS, on the memorandum.<sup>18</sup> She expressed concern at the lack of engagement with the UK Government (see for example paragraphs 20–21 of the transcript). We wrote to the UK Government on this matter<sup>19</sup> and received a response which, in places, rejects the statements made by the Minister for Climate Change.<sup>20</sup> We published our report on 12 September 2023.<sup>21</sup> During the debate on 12 September the Minister stated:

*"Llywydd, this is, unfortunately, a UK Government that does not want to work with devolved Governments, and instead believes processes of consultation and notification are satisfactory safeguards of our constitution. I fundamentally disagree with that view. I could not be clearer that I want to work on a basis of seeking to reach agreement to provide appropriate cross-border regulation that our industry and our citizens need to help us achieve net zero. I've argued the case for the UK Government to work with us. I've asked for the Bill to be delayed so that we can agree a solution that respects this Senedd and our legitimate devolved responsibility.*

*Finally, I have reminded the UK Government of their own stated commitment to the Sewel convention and that under no circumstance would it be appropriate to pass this Bill without the consent of the Senedd."<sup>22</sup>*

**16.** Later in the debate the Minister also stated:

*"We had no full text of the Bill before it was introduced. We had small extracts shared in isolation, but the full text, which is 346 pages, was shared the evening before it was published. And it's now infamous in the Welsh Government that you*

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<sup>17</sup> [Letter from the Counsel General and Minister for the Constitution](#), 4 September 2023, Response to question 2

<sup>18</sup> LJC Committee, [10 July 2023](#), RoP [3-68]

<sup>19</sup> LJC Committee, [Letter to Andrew Bowie MP, Parliamentary Under-Secretary of State for Energy Security and Net Zero](#), 12 July 2023

<sup>20</sup> Department for Energy Security & Net Zero, [Letter from Andrew Bowie MP, Minister for Nuclear and Networks](#), 24 July 2023

<sup>21</sup> LJC Committee, [The Welsh Government's Legislative Consent Memoranda on the Energy Bill](#), September 2023

<sup>22</sup> [Plenary](#), 12 September 2023, RoP [330-331]

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*are summoned to speak to a Minister of the UK Government for a 15-minute conversation and that must happen at 6.30pm on a given night because they're clearly about to announce something the next morning and they've hitherto forgotten to tell you about it."*<sup>23</sup>

**17.** However, on the same day, during a consent debate on the Non-Domestic Rating Bill,<sup>24</sup> Rebecca Evans MS, the Minister for Finance and Local Government, stated:

*"And in the light of the previous debate, I should, I think, just recognise that the experience with this particular piece of legislation has been a very positive one in terms of the collaborative working between Welsh Government and the UK Government, so I just wanted to put that on record, to demonstrate that it can be done, and I think in this case, it has been a very positive experience, I hope on both sides."*<sup>25</sup>

**18.** These last two examples highlight a mixed picture in terms of engagement and also that intergovernmental relations vary depending on the Whitehall departments involved.

### **Our engagement with UK Ministers in relation to UK Bills**

**19.** We have also raised our own concerns directly with UK Government Ministers about poor intergovernmental relations and have sought their perspective on what we regard as an excessive use of UK Bills to make provision in devolved areas. For example, we wrote to the then Secretary of State for Levelling Up, Housing and Communities, the Rt Hon Greg Clark MP, on 20 July 2022<sup>26</sup> and received a response on 30 August 2022,<sup>27</sup> which, while relatively positive, did not address matters of detail. The response also made the following observation:

*"This engagement is also important to identify where a UK government bill can include provisions within a devolved legislature's competence and **enable timely pragmatic solutions to policy challenges to deliver for people of Wales freeing up devolved legislatures time** whilst respecting their legislative competence via the legislative consent process."*

**20.** We do not share the sentiment highlighted in bold (this was again included in follow-up correspondence with his successor, the Rt Hon Michael Gove MP, which we refer to below) as it is not a matter for the UK Government to suggest how the Senedd uses its time or on what it

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<sup>23</sup> [Plenary](#), 12 September 2023, RoP [374]

<sup>24</sup> It should be noted that on this Bill the Committee's view was the Welsh Government should have introduced its own Bill to Senedd Cymru, and legislated in parallel, rather than use a UK Bill passing through the UK Parliament; LJC Committee, [The Welsh Government's Legislative Consent Memorandum on the Non-Domestic Rating Bill](#), June 2023

<sup>25</sup> [Plenary](#), 12 September 2023, RoP [409]

<sup>26</sup> [Letter to the Secretary of State for Levelling Up, Housing and Communities](#), 20 July 2022

<sup>27</sup> [Letter from the Secretary of State for Levelling Up, Housing and Communities](#), 30 August 2022

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should legislate. This text highlights perhaps a lack of understanding about the principles of devolution. We would also add that despite the positive comments about the process in the letter from the Secretary of State, our report on the Welsh Government's legislative consent memorandum on the Levelling-up and Regeneration Bill drew attention to the lack of engagement from the UK Government on that Bill (to which we have also drawn attention in paragraph 11 above).<sup>28</sup>

**21.** Following our correspondence with the Rt Hon Greg Clark MP we wrote to the Rt Hon Michael Gove MP asking whether guidance provided on engagement on UK Bills was formal in nature (comparable to devolution guidance notes (DGNs) for example).<sup>29</sup> In his response,<sup>30</sup> he told us that "Guidance and support is then adapted to the specific circumstances of each bill...", which suggests that no formal process is in place across Whitehall.

**22.** Our correspondence with the Rt Hon Michael Gove resulted in the Committee inviting him to give evidence to us on the subject of intergovernmental relations. However, a formal response is still awaited some 7 months later.<sup>31</sup>

### **Intergovernmental relations post-Brexit**

**23.** The UK's withdrawal from the EU necessitated the development of new domestic structures to manage relations between the governments in areas of law, policy and international relations previously governed or coordinated by the EU. Some new arrangements to undertake this work were agreed as a result of the IGR Review.

**24.** Historically, intergovernmental cooperation on EU, and international relations, were contained in two concordats as part of a broader Memorandum of Understanding (MoU) agreed in 2013 between the UK Government and the devolved governments.<sup>32</sup> An International Relations Concordat was planned as part of the IGR Review; however, it has not yet been agreed. As such, we cannot comment on the extent to which it would replace the arrangements contained in the 2013 MoU to reflect the post-Brexit context. This matter is particularly relevant to your Committee's consideration on what remains to be addressed.

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<sup>28</sup> LJC Committee, [The Welsh Government's Legislative Consent Memoranda on the Levelling-up and Regeneration Bill, February 2023](#), paragraph 47

<sup>29</sup> [Letter to Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations](#), 4 November 2022

<sup>30</sup> [Letter from Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations](#), 12 January 2023

<sup>31</sup> [Letter to Secretary of State for Levelling Up, Housing and Communities and Minister for Intergovernmental Relations](#), 14 June 2023 (latest letter)

<sup>32</sup> UK Government, [Devolution: Memorandum of Understanding and Supplementary Agreements](#), October 2013

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**25.** Common Frameworks have emerged as a key mechanism for the development and coordination of policy and legislation across governments in the UK post-Brexit. In response to our recent report on Common Frameworks,<sup>33</sup> the Counsel General and Minister for the Constitution said that the frameworks have the potential to be “enduring, flexible and increasingly significant governance mechanisms for policy areas previously governed by EU law”.<sup>34</sup> We note that, on the whole, the common frameworks have been a positive example of intergovernmental working between officials and Ministers with positive examples of joint-decisions being made. For example, the Welsh Government’s report to the Senedd on intergovernmental relations between 2021-2023 notes work on the Public Procurement Common Framework as a structure that is working well.<sup>35</sup> However, more recently, the Welsh Government has also warned about examples of UK Government departments taking decisions outside of Common Framework structures, thereby by-passing the processes for coordination within them. This has been noted in particular in relation to frameworks in the areas of the environment, food and rural affairs. We hope that these are isolated examples and that the full potential of Common Frameworks to improve devolution awareness and cooperation between governments can be realised.

**26.** This commitment to the use of the common frameworks process by all UK Government departments will be even more important in the context of changes to the body of retained EU law that underpins policy areas governed by the frameworks under the *Retained EU Law (Revocation and Reform) Act 2023* (the REUL Act). For example, we are aware<sup>36</sup> that work was undertaken through the F-gas Common Framework on the development of The Fluorinated Greenhouse Gases (Amendment) Regulations 2023 which are being made using powers in the REUL Act. Such work will be important given the lack of formal consent mechanism in the REUL Act for circumstances when a UK Minister wishes to exercise a delegated power in a devolved area. To date, there remains a lack of clarity around any informal consent process which may have been agreed between the Welsh and UK governments.<sup>37</sup>

**27.** The Committee’s scrutiny of international agreements has yielded new information on intergovernmental ways of working on international obligations. The Welsh Government has advised us of its level of involvement in international agreements negotiation and implementation; whether it had prior knowledge that an agreement was concluded; where

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<sup>33</sup> LJC Committee, Common Frameworks, May 2023

<sup>34</sup> Letter from the Counsel General and Minister for the Constitution, 22 June 2023

<sup>35</sup> Welsh Government, Inter-Institutional relations agreement between the Senedd and the Welsh Government: report on intergovernmental relations covering the period 2021 to 2023. Overview report covering the period April 2021 to March 2023, 18 July 2023

<sup>36</sup> Letter from the Minister for Climate Change, 1 September 2023

<sup>37</sup> Letter from the Counsel General and Minister for the Constitution, 12 September 2023, Response to question 2

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Memorandums of Understanding are in place between the four governments for certain categories of international agreements; the relationships between multiple international agreements and domestic mechanisms; the Welsh Government's approach to its international obligations; and where it holds a different view to the UK Government on legislative competence.

**28.** We have noted a varied approach across Whitehall departments to engagement with the devolved governments on agreements that fall within or have substantive implications for devolved policy areas. This view is supported by the Welsh Government, which, in February 2023, said in response to another of your inquiries that:

*"...it is not possible to say with certainty whether the lead UK Government department always notifies relevant Welsh Government departments, and if so at what stage it does so. This is something that we propose to consider further, together with the UK Government and the other Devolved Governments, when the overall 'Devolution Memorandum of Understanding and Supplementary Agreements' document is reviewed in light of the Inter-Governmental Relations Review outcome."<sup>38</sup>*

**29.** A general example is that engagement with the devolved governments on international trade negotiations seems to have been broadly positive even where agreement on final negotiating positions and priorities is not possible. Conversely, engagement on non-trade international agreements is more varied, and, regrettably, our scrutiny reports<sup>39</sup> frequently note missing or inadequate information on the UK Government's engagement with the devolved governments.

**30.** Despite this, we have found examples of best practice<sup>40</sup> and the UK Government has recognised the interests of the devolved governments in international agreements, for which it has described intergovernmental discussions as "critical" for the future.<sup>41</sup>

## **Ways to improve understanding of devolution**

**31.** We acknowledge that from time to time disagreements will occur between governments. However, in our view, the better the understanding of devolution and what it means in practice,

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<sup>38</sup> Public Administration and Constitutional Affairs Committee, The Scrutiny of International Treaties and other international agreements in the 21<sup>st</sup> century inquiry, [Written evidence from The Welsh Government](#) (SIT 27)

<sup>39</sup> [International Agreements](#), LJC webpage

<sup>40</sup> Public Administration and Constitutional Affairs Committee, The Scrutiny of International Treaties and other international agreements in the 21<sup>st</sup> century inquiry, [Written evidence from the LJC Committee](#) (SIT 22)

<sup>41</sup> UK Government, [Government response to the House of Lords International Agreements Sub-committee Report: Treaty Scrutiny, Working Practices](#)

the more likely it is that the frequency of disagreements will diminish and, where they do arise, that they are resolved more swiftly. It is also worth bearing in mind that devolution is not static and there is a need for Whitehall departments to keep pace with changes to the devolution settlement. We also acknowledge that some departments are likely to have a better understanding of devolution than others, for example in departments where engagement occurred as a consequence of the need to discuss EU policy matters while the UK was a Member State.

**32.** We believe understanding of devolution could be improved in the ways set out below:

### **The UK Parliament adopting a definitive view of the Sewel Convention**

**33.** In evidence to us on 10 July 2023, the Counsel General and Minister for the Constitution discussed his concerns with the Sewel Convention.<sup>42</sup> In particular, he noted the need for “a much stronger constitutional status for Sewel”, also saying in the context of how to resolve disputes:

*“The crux of the problem with Sewel is either the lack of codification of Sewel—the lack of clarity as to what it means, and the diverse ways in which it is treated—. The fact that we don't have a common position any more, I think, in terms of what Sewel amounts to, is really the core of the problem. Now, maybe that would be the mechanism, by taking all the disputed legislation we've had, collectively, and trying to use the disputes process to try and resolve that. But, can a disputes process resolve what is, ultimately, a political process of a constitutional disagreement that doesn't have a real justiciable status?”<sup>43</sup>*

**34.** Our predecessor Committee in the Fifth Senedd submitted evidence to the House of Commons Procedure Committee to inform its inquiry on the procedure of the House of Commons and the territorial constitution. In that evidence it stated:

*“It is perhaps not surprising therefore that a Convention based on a single contribution to a parliamentary debate has failed to form a satisfactory, long-term basis for the relationship between the devolved legislatures and the UK Parliament.*

*We therefore believe that the UK Parliament should clearly set out its responsibilities and understanding as regards the application of Sewel Convention and its practical operation, including the meaning of ‘not normally’. (...)*

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<sup>42</sup> LJC Committee, 10 July 2023, RoP [161-189 and 240-250]

<sup>43</sup> LJC Committee, 10 July 2023, RoP [164]

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*In our view there must be a more comprehensive and transparent process that includes a mechanism for ensuring that the views of the Senedd (and the Welsh Government) are set out clearly and at known points in the UK Parliament's legislative process. We do not believe that it would be appropriate for this mechanism to rely on the UK Government's interpretation of the views of the Senedd or the Welsh Government.*<sup>44</sup>

**35.** We believe that the points made by our predecessor Committee, which are still relevant, need to be addressed.

**36.** Sometimes, at the start of an autumn term when the UK Parliament enters its conference recess, the fact that parliamentary timetables do not align can mean that Senedd committees cannot consider and report in time to meet a consent motion debate in the Senedd, the timing of which is itself determined by timetabling of the Bill's proceedings through the UK Parliament. At times it can appear that UK Government departments are not prepared to take into account the legislative consent process when timetabling Bills through the UK Parliament or are not aware of how the legislative consent process operates in the Senedd. We believe this position needs to change.

**37.** Related to this we also believe that there should be more transparency around how the consent process fits into the parliamentary timetable for individual UK Bills. While this may require information to be provided by the UK Government, given that consent should be factored into their legislative planning, we would hope that this would not prove to be problematic.

**38.** In March 2023, Baroness Drake, Chair of the House of Lords Constitution Committee notified us that the House of Lords Business document now gives fuller and more prominent information about when consent is pending or contested and when it has been granted or withheld. This change was very welcome and we hope that other positive changes can also be put in place.

**39.** Since 2021, there have been nine occasions where the Senedd has refused consent, only for the UK Parliament to legislate anyway.<sup>45</sup>

**40.** We believe that problems with the workability of the legislative consent process should not be viewed solely as an issue for the Senedd but as a matter of concern for Whitehall and the UK

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<sup>44</sup> Letter from the LJC Committee, 30 March 2021

<sup>45</sup> Senedd Research, The Sewel Convention: What happens to UK laws rejected by the Senedd?, July 2023. Since the publication of the article the Senedd has refused consent for 3 further UK Bills.

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Parliament, given its importance to the effective functioning of the UK constitution and the existing constitutional framework.

**41.** Providing a more robust constitutional footing for the Sewel Convention, built around a clearly defined and universally understood process would have the potential to improve the understanding of devolution in Whitehall, providing an incentive to ensure it is factored into work planning in UK Government departments and the UK Parliament, throughout the UK legislative process.

### **Disputes on matters of legislative competence**

**42.** As we have already referred to above, there appears to us to be some uncertainty about the extent to which the dispute resolution process arising from the IGR Review can be used to resolve disagreements on individual UK Bills. However, one aspect which we believe merits specific consideration concerns disputes on matters of legislative competence. If the new IGR structures as currently constituted are unable to resolve disputes over legislative competence on specific UK Bills, a new mechanism would need to be found. At the very least, governments should be required to publish a statement outlining the areas of dispute that can be considered by both the UK and devolved legislatures before the amending stages of a Bill are concluded.

### **Regular review and updating of Devolution Guidance Notes (DGNs)<sup>46</sup>**

**43.** DGNs do not appear to have been updated since 2019 and yet they are key in helping civil servants across Whitehall understand devolution. We would ask therefore:

- What are the processes in place in the Civil Service for updating these?
- What are the processes for ensuring they are circulated and used?
- When will DGNs be updated to reflect Common Frameworks and developments around the *United Kingdom Internal Market Act 2020*? For example common frameworks documents have not been updated to reflect the new structures agreed as part of the IGR Review.

**44.** As we have highlighted above there have been instances where the UK Government's engagement with the Welsh Government has been very late in circumstances where provision in a devolved area is to be included in a UK Bill. It remains unclear to us whether Part 2 of the

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<sup>46</sup> Constitutional and Legislative Affairs Committee, [UK governance post-Brexit](#), February 2018, See recommendation 4

DGN<sup>47</sup> which covers the inclusion of a UK Parliament Bill is being followed fully. We believe therefore that there would be merit in considering the extent to which this particular DGN is being used and how effective it has been.

**45.** We also believe that there should be a clear engagement timetable followed for all UK Bills that include devolved provision. Such detailed information should be included in revisions to the DGN we refer to above, alongside updates necessary to reflect the outcome of the IGR Review.

### **UK Ministers engaging with Senedd Committees**

**46.** Based on our understanding, UK Ministers have a mixed record of engaging with Senedd Committees generally. It can be difficult to secure Ministers' attendance at evidence sessions in the Senedd, with some exceptions. We are aware that some Committees have noted that they have been offered the Secretary of State for Wales when they had requested a Minister from a specific Department.

**47.** As mentioned above, we have invited the Rt Hon Michael Gove MP, Secretary of State for Levelling Up, Housing and Communities to give evidence to us on intergovernmental relations on two occasions, in February 2023 and by way of a reminder in June 2023. While the second letter was acknowledged, we have yet to receive a formal response.

**48.** However, Lord Bellamy was willing to appear before the Committee in December 2022 and we found the evidence session to be particularly helpful, with engagement continuing afterwards through correspondence.

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<sup>47</sup> Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales, Last updated 20 April 2018

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